

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
RC2 CORPORATION)
_____)

CPSC Docket No. _____

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, RC2 Corporation and the staff ("Staff") of the United States Consumer Product Safety Commission ("CPSC" or the "Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051 – 2089 ("CPSA").

3. RC2 Corporation is a corporation organized and existing under the laws of the state of Delaware, with principal offices located in Oak Brook, Illinois. At all times relevant hereto, RC2 Corporation designed, imported and sold toys and children's products. "RC2" as used in this Agreement means RC2 Corporation and its wholly owned subsidiary Learning Curve Brands, Inc. and their officers, directors, shareholders and employees.

STAFF ALLEGATIONS

4. Between January 2005 and April 2007, RC2 commissioned one of its dedicated contract manufacturers, Overseas Winner Limited ("OW"), to manufacture in China approximately 1,506,900 units of various *Thomas & Friends™* Wooden Railway toys for sale in the United States. The toys consisted of wooden vehicles, buildings and other train set components for young children, comprising 26 distinct component styles packaged in 23 retail SKU's (collectively, the "TWR Toys"). Between January 2005 and May 2007, RC2 imported into the United States approximately 1,506,900 units of the TWR Toys, and in turn, shipped them to its retail and other customers. The TWR Toys were sold or offered for sale to consumers primarily at toy stores and various retailers nationwide, and secondarily through RC2's e-commerce websites or as 'sub-components' of retail items distributed independently of RC2, from January 2005 through June 2007, for between \$10 and \$70 per unit. The TWR Toys represented approximately 4% of total wooden railway toy units sold by RC2 within the U.S. market.

5. Between March 2003 and April 2007, RC2 commissioned OW and another of its dedicated contract manufacturers, 3i Corporation, Ltd., to manufacture in China certain of 5 other component styles from *Thomas & Friends™* Wooden Railway toys product line; comprising approximately an additional 200,000 units, for sale in the United States (collectively, the "Additional TWR Toys"). Between March 2003 and September 2007, RC2 imported into the United States approximately 200,000 units of the Additional TWR Toys, and in turn, shipped them to its retail and other customers. The Additional TWR Toys were sold or offered for sale to consumers primarily at toy stores and various retailers nationwide, and secondarily through RC2's e-commerce websites or as 'sub-components' of retail items distributed independently of RC2, from March 2003 to September 2007, for between \$10 and \$40 per unit.

6. The TWR Toys and Additional TWR Toys (collectively, "Subject Products") are "consumer product(s)," and, at all times relevant hereto, RC2 was a "manufacturer" and a "retailer" of those consumer products, which were "distributed in commerce," as those terms are defined in CPSC sections 3(a)(3), (5), (8), (11) and (13), 15 U.S.C. § 2052(a)(3), (5), (8), (11) and (13).

7. The Subject Products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 C.F.R. Part 1303 (the "Lead Paint Ban"). Under the Lead Paint Ban, toys and other children's articles must not bear "lead-containing paint," defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 C.F.R. § 1303.2(b)(1)

8. On March 29, 2007, RC2 was notified by one of its U.S. retail customers that a TWR Toy supplied by RC2, specifically the Thomas & Friends Oval Set (Product # LC99561), had failed testing that demonstrated its paint or other surface coatings contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban. The Oval Set (Product # LC99561) was produced at OW, which was at the time one of two contract manufacturers of the *Thomas & Friends™* Wooden Railway toys product line, both based in China. On the same day, RC2 inventory of the Oval Set (Product # LC99561) was placed on hold and an inventory audit was conducted to identify quantities per production-date code on hand. An internal investigation by RC2, in consultation with its contract manufacturers and pertinent customers, then ensued. It involved extensive testing of the *Thomas & Friends™* Wooden Railway toys product line for the presence of lead, including tests conducted by independent certified labs in China and the U.S. on finished toys as well as liquid paints and solvents used the manufacturing process.

9. The internal investigation yielded multiple failing test results demonstrating that dozens of TWR Toy samples bore or contained paint or other surface coatings with lead levels in excess of the permissible 0.06 percent (600 ppm) limit set forth in the Lead Paint Ban. Based upon information that primarily emerged during this investigation period, RC2 determined that five PMS (Pantone Matching System®) surface paint colors applied to certain finished product components had failed at least one test for the presence of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban; a sixth color, yellow, had failed testing prior to the investigation period and then passed a subsequent test, but ultimately was included among the non-compliant paint colors as a precautionary measure. RC2 also determined that all the affected units composing the TWR Toys had been manufactured by OW rather than by RC2's other Chinese contract manufacturer. RC2 cross-referenced each of the failing colors with the colors of paint used on each toy component, thereby identifying 26 distinct component styles which used at least one of these six colors, and thus ascertained the scope of affected models and product units comprising the TWR Toys for recall purposes.

10. After RC2 reported this information to CPSC, on June 13, 2007, the Commission and RC2 announced a recall of about 1,500,000 units of the TWR Toys because "Surface paints on the recalled products contain lead. Lead is toxic if ingested by young children and can cause adverse health effects."

11. Throughout the summer of 2007, RC2 and other entities with which it does business continued with additional testing of items from the *Thomas & Friends™* Wooden Railway toys product line. By supplemental reports submitted to CPSC between August 17 and September 20, 2007, RC2 reported that it had obtained information which reasonably supports the conclusion that five additional toys from this product line have certain specific colors of paint applied to them that "may contain" levels of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban. The continued

investigation yielded further failing test reports demonstrating that additional samples bore or contained paint or other surface coatings with lead levels in excess of the permissible 0.06 percent (600 ppm) limit set forth in the Lead Paint Ban. In this way, RC2 determined the scope of affected models and product units comprising the Additional TWR Toys for recall purposes.

12. On September 26, 2007, the Commission and RC2 announced that the original TWR Toys recall was being expanded in order to include about 200,000 units of the Additional TWR Toys because "Surface paints on the toys can contain excessive levels of lead, violating the federal lead paint standard."

13. RC2 reportedly severed its business relationship with OW completely in June 2007, soon after the original TWR Toys recall announcement. RC2 reportedly already had ceased manufacturing any of the *Thomas & Friends™* Wooden Railway toys at 3i in November 2006.

14. Although at the time of each of the aforementioned recalls RC2 reported no incidents or injuries associated with the presence of excessive lead in the paint or other surface coatings of the Subject Products, it subsequently learned of a number of allegations of such incidents and injuries, some of which became the subject of claims and lawsuits against it. RC2 failed to take adequate action to ensure that the Subject Products complied with the Lead Paint Ban. This failure created a risk of lead poisoning and adverse health effects to children. Lead is toxic if ingested by young children and can cause adverse health effects.

15. The Subject Products constitute "banned hazardous products" under CPSA section 8 and the Lead Paint Ban, 15 U.S.C. § 2057 and 16 C.F.R. §§ 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

16. Between March 2003 and September 2007, RC2 sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the Subject Products, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). RC2 committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

17. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, RC2 is subject to civil penalties for the aforementioned violations.

RESPONSIVE ALLEGATIONS OF RC2

18. RC2 denies that it violated section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1), and further denies that it did so "knowingly" (as defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d)).

AGREEMENT OF THE PARTIES

19. Under the CPSA, the Commission has jurisdiction over this matter and over RC2.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by RC2, or a determination by the Commission, that RC2 knowingly violated the CPSA.

21. In settlement of the Staff's allegations, RC2 Corporation shall pay a civil penalty in the total amount of One Million Two Hundred Fifty Thousand (\$1,250,000.00) dollars within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

22. The Commission will not seek or initiate any enforcement action against RC2 for civil penalties, based upon information known to CPSC through the date of final acceptance of this Agreement, for possible violations of (i) section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4),

regarding CPSC File No. RP070347, associated with Releases #07-212 and #07-308; (ii) sections 19(a)(1) and 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(1) and (a)(4), regarding CPSC File No. RP070524, associated with Release #07-310, and CPSC File No. RP070572, associated with Release #08-119; and (iii) section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), regarding CPSC File No. RP080126, associated with Release #08-120. The Commission's agreement not to seek penalties, as stated herein, will not relieve RC2 from the continuing duty to report to CPSC any new, additional or different information as required by CPSA section 15(b), 15 U.S.C. § 2064(b) and the regulations at 16 C.F.R. Part 1115, regarding these matters.

23. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the *Federal Register*.

24. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, RC2 knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether RC2 failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

25. The Commission may publicize the terms of the Agreement and Order.

26. The Agreement and Order shall apply to, and be binding upon, RC2 and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 26 to appropriate legal action.

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

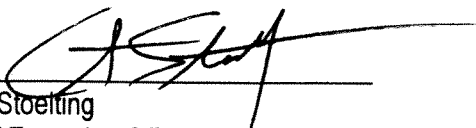
29. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and RC2 agree that severing the provision materially affects

(continued on next page)


the purpose of the Agreement and Order.

RC2 CORPORATION

Dated: 9/18/07

By: 
Curt Stoelting
Chief Executive Officer
RC2 Corporation

Dated: 9/17/09


By: 
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Dated: 11/2/09

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